

above COP does not imply that they were below cost.

Interfit claims that the concurrence memorandum from the preliminary determination (September 26, 1994, at page 3) and a November 15, 1994 letter from the Department to the counsel for Interfit, led the company to believe that the transfer prices would be used so long as they were determined to be at arm's length. Interfit assumed that if the Department had at that time "reasonable grounds" to believe that the pipe was sold to Interfit at less than the COP, the Department would have stated that cost was an issue.

DOC Position

The fact that Interfit failed to provide evidence that Vallourec's price for the input pipe was above the cost of producing the pipe, despite numerous requests from the Department for this information, provides the Department with "reasonable grounds to believe or suspect" that the transfer prices paid by Interfit were less than Vallourec's cost of production. Therefore, in computing the CV, we have valued the pipe on the basis of the BIA used to calculate COP for the home market sales below cost test. Because the transfer prices have been disregarded in accordance with section 773(e)(3) of the Act, we do not need to address the issue of whether the transfer prices satisfy the criteria under section 773(e)(2). The Department's preliminary determination expressly noted that whether the transfer prices were at arm's length would be examined at verification. In addition, the Department continued to pursue data that would confirm that the transfer prices are above COP. See, Supplemental/Deficiency Section D Questionnaire (November 15, 1994), Section D Verification Agenda (December 5, 1994), Fax to Counsel for Interfit (December 8, 1994), and Section D Verification Report (January 12, 1995). Therefore, contrary to Interfit's claims, the question of cost remained an issue.

Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from France, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by Interfit and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market

value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Interfit, S.A.	32.58
All Others	32.58

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

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[A-508-807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0189 and 482-2239, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from Israel are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50568), the following events have occurred:

On October 5, 1994, pursuant to section 353.20(b)(1) of the Department's regulations (19 CFR 353.20(b)(1)(1994), Pipe Fittings Carmiel, Inc. ("Carmiel") requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the publication of the final determination in this case until not later than February 16, 1995 (59 FR 56461).

On October 20, 1994, Carmiel filed a second supplemental/deficiency response, which included a revised home market sales listing. On November 27, November 28, and December 4, 1994, we verified Carmiel's sales information at its offices in Tel Aviv, Israel. On January 23, 1995, and on January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

Carmiel sold identical products in both Israel and the United States during the POI. Therefore, in making our fair value comparisons, we compared sales of merchandise identical in all respects.

Fair Value Comparisons

To determine whether Carmiel's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade.

We made revisions to Carmiel's reported data, where appropriate, based on verification findings.

United States Price

Because Carmiel's U.S. sales were made to unrelated purchasers in the United States prior to importation, and because the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Carmiel's USP based on packed C.I.F. prices to unrelated customers in the United States. We made deductions, where appropriate, for marine insurance, ocean freight, foreign inland freight, port fees, and customs agents fees and expenses.

We made an adjustment to U.S. price for the value-added tax ("VAT") paid on the comparison sales in Israel, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States*, Slip Op. 93-194 (CIT October 7, 1993). (See *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

In order to determine whether the sales in the home market are an adequate basis for the FMV, the Department generally compares the quantity of such or similar merchandise sold in the home market during the POI to the quantity sold for exportation to third countries. In this case, Carmiel made sales only to the United States and Israel during the POI. Based on the substantial quantity of home market sales in relation to its U.S. sales, we determined that the home market was viable.

In our preliminary determination, we stated that the appropriate date of sale is the date of the first written document which sets the price and quantity for the sale (see *Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 12240, 12241; March 16, 1994) and *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, et al.*, (58 FR 39729, 39783; July 26, 1993)).

Accordingly, on October 20, 1994, respondent submitted a new home market sales listing using the invoice date as the date of sale. We confirmed at verification that the invoice date is the first written document setting the terms of sale in the home market and is, thus, the appropriate date of sale.

We have calculated FMV using the delivered prices reported by Carmiel in its October 20, 1994 home market sales listing. We adjusted the prices for certain discounts offered to home market customers. Also, in light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13#F.3d 398 (Fed. Cir., 1994), we adjusted for post-sale home market movement charges under the circumstances-of-sale provision of the Act (Section 773(a)(4)(B)). This adjustment included home market inland freight.

We also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the interest rate paid by Carmiel for short-term New Israeli Shekel ("NIS") loans linked to the dollar. In calculating the home market credit expense, we used Carmiel's borrowing rate for unlinked short-term NIS loans.

We adjusted for VAT in accordance with our standard practice. (See the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales, as published in the International Monetary Fund's International Financial Statistics (see 19 CFR 353.60).

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from Israel. In our preliminary determination, pursuant to section 733(e)(1) of the Act

and 19 CFR 353.16, we analyzed the allegation using the Department's standard methodology. Because the information on which our analysis was based has not changed, we have performed the same analysis as explained in the preliminary finding. Based on this analysis, the Department determines, in accordance with section 735(a)(3) of the Act, that critical circumstances do not exist with respect to imports of certain carbon steel butt-weld pipe fittings from Israel.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1

Carmiel argues that U.S. sales relating to the September 22, 1993, invoice are outside the period of investigation. The company claims that the terms of these sales were set in the purchase order, which is dated March 25, 1993. Carmiel argues that while the actual quantity shipped changed slightly before the shipment date, this change was very small and resulted from limitations imposed by the size of the shipping containers.

DOC Position

We agree with respondent. Carmiel appropriately excluded these sales from its U.S. sales listing because the terms of the sales were set well before the POI. We agree that the change in quantity was minor and does not constitute a change in the basic terms of the sale.

Comment 2

At verification, Carmiel officials notified the Department that they had not reported an additional home market discount which was given to customers who made prompt payments. The information pertaining to these discounts was submitted to the Department after the verification was completed, and the Department returned the information as untimely. Carmiel argues that the Department should accept the information and make an adjustment for this discount. According to Carmiel, these discounts were inadvertently omitted from the company's response because the response was prepared by an outside consultant using data that was not computerized. Furthermore, Carmiel argues that the information should be considered verified, regardless of when

it was submitted, because the team verified the actual prices paid on home market sales.

Petitioner argues that the Department should deny Carmiel the adjustment because the information was submitted after the deadline for submission of factual information. Petitioner notes that Carmiel chose not to report this information on a timely basis.

DOC Position

We agree with petitioner. Section 353.31(a)(i) of the Department's regulations states that the last date factual information can be submitted for consideration in a final determination is "seven days before the scheduled date on which the verification is to commence." This information was not submitted prior to the start of verification and, therefore, it is untimely. It also is unclear that the information was "inadvertently" omitted as Carmiel claims. At verification, Carmiel officials stated that they had chosen not to report this discount because the value of the discount was insignificant compared to the amount of work involved. Thus, even if the Department were to consider inadvertency as an excuse, it has not been established in this instance. Finally, while the Department's verifiers did examine several home market sales, they saw no documentation regarding these discounts and thus, there is no basis for considering these discounts to have been verified.

Comment 3

Carmiel argues that the Department should calculate the home market credit expense using a higher interest rate than that used for the preliminary determination. Carmiel points out that, at verification, the team saw evidence of company borrowing at a much higher interest rate, indicating that the company's home market credit costs were actually higher than reported. Using the lower rate to make the credit adjustment would understate the company's expenses. Therefore, the Department should use either the higher rate, or an average of the reported rate and the higher rate.

Petitioner claims that there is no verified information indicating the extent of Carmiel's borrowing which is taken out at the higher interest rate. While officials stated that the majority of Carmiel's short-term financing was at the higher rate, this claim was not substantiated. Additionally, petitioner argues, rational economic behavior suggests that the majority of Carmiel's financing would be at the lower rates. Moreover, the Department does not

possess enough verified information to appropriately weight the two rates in order to calculate an average. Finally, petitioner points out that Carmiel chose to report the lower, more conservative rate.

DOC Position

Carmiel reported the lower rate in its response, and we verified this rate. While we also verified that Carmiel received some financing at the higher rate, we do not have verified information regarding the total amount of Carmiel's borrowings at this rate. We agree with petitioner that without knowing what portion of Carmiel's short-term financing is at the higher rate, it is not possible to calculate a relevant average of the two rates. Therefore, we have used the lower interest rate reported by respondents in making the home market credit adjustment.

Comment 4

Carmiel states that the Department's adjustments for VAT in this case are a misapplication of the statute because Carmiel reported its home market sales "net" of VAT. Carmiel recognizes that this adjustment was made as a result of the CIT decision in *Federal-Mogul Corp v. United States*, 15 ITRD 1127 (CIT 1993); however, Carmiel argues that the court also misinterpreted the statute. According to Carmiel, the statute only requires the Department to adjust for VAT when it is included in or added to the home market prices reported. Thus, when the tax is not included in or added to the prices reported, the Department should not then add the tax to FMV. Carmiel claims that adding VAT to both FMV and USP, as was done in the preliminary determination, resulted in significant distortions to Carmiel's margin.

Petitioner argues that the Department appropriately adjusted for VAT by adding the tax to both FMV and USP and that this adjustment did not distort Carmiel's margins. Petitioner cites *Calcium Aluminate Coment, Cement Clinker and Flux from France*, 59 FR 14136, 14138 25, 1994) in support of the argument that the Department must include an adjustment for VAT in the USP to account for VAT in the home market. Because respondent has reported home market sales values excluding VAT, the Department should add VAT to the net FMV and USP.

DOC Position

The statute provides for dumping determinations to be made on a tax inclusive basis. Section 772(d)(1)(c) of the Act provides for an offsetting

adjustment to U.S. price, based on the presumption that home market prices include VAT. Accordingly, the Department has insisted that HM prices be reported on a VAT inclusive basis (see *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from The Federal Republic of Germany*, 54 FR 18992, May 3, 1989). Allowing respondents to choose whether to report HM prices net of taxes would allow them to partially determine their own dumping margins. Because respondent reported its home market sales net of VAT, we have added the VAT back onto the home market price and adjusted the USP accordingly.

Comment 5

Petitioner argues that two companies, Keshta Ltd. ("Keshta") and Keshet Steel Import/Export Company ("Keshet"), are so closely related to Carmiel that the three companies should be treated as one for the purposes of the final determination.

Carmiel states that since it reported the sales of both Keshet and Keshta, the companies are essentially being treated as one company. Furthermore, since Carmiel is the only exporter, Keshet and Keshta would be subject to the all others rate (Carmiel's rate) if they did begin to export to the United States.

DOC Position

We verified that neither Keshet nor Keshta made sales to the United States during the POI. Moreover, we verified that the sales of both Keshet and Keshta were included in Carmiel's home market sales response. Therefore, the three companies have been treated as one company for purposes of this determination.

Comment 6

Petitioner argues that certain of Carmiel's movement expenses are most likely incurred by value and, thus, should have been allocated by value rather than by weight.

Carmiel argues that the results of allocating by value versus allocating by weight will be virtually the same given the small amounts in question and the fact that the price and weight of the elbows in question rise proportionately. Furthermore, Carmiel states that the costs were allocated according to the Department's instructions. Therefore, the Department should continue to use the costs as allocated by Carmiel and as verified by the Department.

DOC Position

We agree with petitioner that marine insurance and agents fees should have

been allocated by value, rather than weight. In response to Carmiel's assertion that it followed the Department's instructions, we note that the Department's August 3, 1994 deficiency questionnaire, at page 4, instructed respondent to allocate expenses on the basis that they are incurred. Since these expenses are incurred by value, they should be allocated on such basis. Accordingly, we have reallocated marine insurance and agents fees by value.

Comment 7

Petitioner states that the payment date for one home market invoice should be corrected based on findings at verification.

Carmiel notes that, while several payment dates were found to be incorrect at verification, the payment date problems were minor and resulted from the fact that its records are not computerized. Therefore, correcting the payment dates will not have a significant effect. Nonetheless, respondent states that all of the verified payment dates should be corrected.

DOC Position

We agree with both petitioner and respondent. It would be inappropriate to use payment dates which we know to be incorrect for the final determination. Therefore, we have corrected the misreported payment dates on the verified sales. We have used these corrected payment dates to calculate the home market credit adjustment.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Israel, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by Carmiel and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Pipe Fittings Carmiel, Inc.	8.84
All Others	8.84

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the final affirmative determination in the concurrent countervailing duty investigation of certain carbon steel butt-weld pipe fittings from Israel, which was 2.26 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 6.58 percent for Carmiel and a deposit rate of 6.58 percent for all others.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: February 16, 1995.
 Barbara R. Stafford,
Acting Assistant Secretary for Import Administration.
 [FR Doc. 95-4725 Filed 2-24-95; 8:45 am]
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[A-533-811]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1442.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from India are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the Federal Register on October 4, 1994 (59 FR 50562), the following events have occurred:

On October 5, 1994, Sivanandha Pipe Fittings Ltd. (Sivanandha) and Karmen Steels of India (Karmen), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the Federal Register a notice postponing the publication of the final determination in this case until February 16, 1995 (59 FR 56461).

From October 31 to November 5, 1994, we verified Sivanandha's and Karmen's sales information in Madras, India.

We received case and rebuttal briefs on January 23 and January 30, 1995, respectively, from petitioner and respondents.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is